UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,949	05/02/2006	Andreas Michl	01012-1024	4083

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EXAMINER
MCLEOD, MARSHALL M

ART UNIT	PAPER NUMBER
2457	

NOTIFICATION DATE	DELIVERY MODE
04/28/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com

	Application No.	Applicant(s)
	10/550,949	MICHL, ANDREAS
Office Action Summary	Examiner	Art Unit	
	MARSHALL MCLEOD	2457	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 December 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-9 and 12</u> is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-9 and 12</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a)☐ All b)☐ Some * c)☐ None of:

　　1.☐ Certified copies of the priority documents have been received.

　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
　　　application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____

DETAILED ACTION

1.   Claims 1-9 and 12 are pending in this application. Claims 10 and 11 have been

cancelled. Furthermore, the examiner withdraws the claim objection that was previously issued

for claim 1. The examiner also withdraws the 35 U.S.C. 112 first paragraph rejection issued for

claim 1.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   **Claims 1-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

Birsan et al. (Patent No US 6,848,078 B1), hereinafter Birsan, in view of Tuma et al (A

hands-on approach to teaching the basic OSI reference model, Journal: International

Journal of Electrical Engineering Education, April 2000), hereinafter Tuma.

4.   With respect to claim 1, Birsan discloses a method for determining deviations of a part of

an end-system message of modular structure generated in a hierarchically-structured end system

of a telecommunications device (Abstract, lines 1-3) by comparison with a reference message

(Column 5, lines 15-27) comprising the steps of: reading in a reference message (Column 8, lines

43-49), reading in an end-system message (Column 9, lines 10-17) generated in the end system,

performing a message-structure analysis of the reference message (Column 8, lines 43-49),

performing a message-structure analysis of the generated end-system message (Column 9, lines

10-17), displaying both structural units of the reference message and structural units of the

generated end- system message (Column 2, lines 6-7), determining deviations of the selected

structural unit of the end-system message by comparison with the selected structural unit of the

reference message (Column 4, lines 37-57) after the respective selections of the respective

structural units, based on a structure and values for parameters of structural units (Column 6,

lines 30-41 and Column 7, lines 3-12; also See Figure 3, item (42) and (52)), and outputting of

individual structural units of the selected structural unit of the end-system message deviating

from the selected structural unit of the reference message indicating values of parameters of the

respective individual structural units (Column 6, lines 30-41 and Column 7, lines 3-12; also See

Figure 3, item (42) and (52)) of the selected structural unit end-system message (Column 6, lines

43-47; Column 8, lines 58-59; also See Figure 3) generated in the end system (Column 9, lines

10-17).

Birsan does not disclose that the device is structured and based on an OSI reference model;

containing information of different layers according to the OSI reference model; selecting a

displayed structural unit of the reference message, selecting a displayed structural unit of the

end-system message.

However, Tuma discloses that the device is structured and based on an OSI reference model

(Paragraph 1, Introduction, Page 1, of the NPL document; also see Figure 1.); containing

information of different layers according to the OSI reference model (Paragraphs 1-6; Pages 1-7,

of the NPL document, which discloses in detail what information each layer consists of);

selecting a displayed structural unit of the reference message, selecting a displayed structural unit

of the end-system message (Paragraph 3, The Data Link Layer, Page 3; subparagraph 5).

It would have been obvious have been obvious to the person of ordinary skill in the art at the

time of invention to combine the teachings of Birsan with the teachings of Tuma in order to

provide the user with a more detailed comparison of messages and files by comparing the

makeup of each message or file.

5.   With respect to claim 2, Birsan discloses identical structural units of the reference

message and of the end-system message generated in the end system output, wherein the

structural units of the end-system message deviating from the reference message are output in a

manner graphically distinguishable from the identical structural units (Column 6, lines 14-24).

6.   With respect to claim 3, Birsan discloses structural units only present in the reference

message are output in a manner graphically distinguishable from structural units other than the

structural units only present in the reference message (Column 6, lines 14-24).

7.   With respect to claim 4, Birsan discloses structural units only present in the generated

end-system message are output in a manner graphically distinguishable from structural units

other than the structural units only present in the generated end- system message (Column 6,

lines 14-24).

8.   With respect to claim 5, Birsan discloses the structural units at least of the end-system

message are output in a manner corresponding to a modular construction (Column 2, lines 55-

61).

9.   With respect to claim 6, Birsan discloses the outputting is provided in a first region of a

screen display (Column 6, lines 17-21; see also Figure 3).

10.   With respect to claim 7, Birsan discloses the structural units of the end-system message

are output in a second region with an indication of information regarding a data stream of the

end-system message, wherein structural units deviating from the reference message are output in

a manner distinguishable from structural units of the second region other than the structural units

deviating from the reference message (Column 2, lines 6-17).

11.   With respect to claim 8, Birsan discloses the structural units of the end-system message

are output in a third region with an indication of information of a data stream of the reference

message, wherein structural units deviating from the reference message are output in a manner

distinguishable from structural units of the third region other than the structural units deviating

from the end-system message (Column 2, lines 6-17).

12.   With respect to claim 9, Birsan discloses a digital storage medium with electronically-

readable control signals, configured to co-operate with a programmable computer or digital

signal processor (Column 9, lines 18-25).

13.   With respect to claim 12, Birsan discloses computer software product with program-code

means stored on a machine-readable data carrier, for the implementation of the method according

to claim 1, when the software is run on a computer or a digital signal processor (Column 9, lines

26-34).

Response to Arguments

14.   Applicant's arguments with respect to claims 1-9 and 12 have been considered but are not

persuasive. The claims when given their broadest reasonable interpretation, in regards to the

"performing", "displaying", "selecting" and "determining" steps, have not been specifically tied

to the OSI layers of the messages and therefore the interpretation of the "message structure" is

not limited to the OSI layers.

15.   With respect to applicant's argument on page 9 of the instant remarks. Applicant's

contend that "Birsan et al. does not disclose any comparison only of selected units after their

selection. In addition, no hint is given to change the order of comparison and selection. The

Applicants submit that column 1, lines 33-37, is to be viewed in light of column 4, lines 61-67,

column 5, lines 51-56, column 6, lines 48-52, and column 8, lines 58-62. Also, column 7, lines

29-30, is not at all equivalent to selecting structural units of messages, since again complete files

are selected". The examiner respectfully disagrees and refers applicants' to Column 5, lines 57-59, which discloses "The preferred embodiment of the present invention **does not function at file level, but rather at a higher level, the XML element level**". The examiner interprets this to read on applicants' limitations as applicants' have not made clear what exactly the "structural units of messages" are and a person having ordinary skill in the art can interpret an XML element of a file as a structural unit of that file/message. Furthermore, the examiner would like to remind applicant's that the rejection that was given is a 35 U.S.C 103(a) rejection and as such it should be viewed as a whole in conjunction with Tuma et al. and not in a piecemeal fashion. Also, in response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Birsan compares the composition of two messages and Tuma discloses the composition of messages and how they are sent in respect to the OSI model's network and data layers.

16.   With respect to applicants' argument on the bottom of page 9 of the instant remarks. Applicant's contend that "Tuma et al. does not discuss the selection of structural units prior to determining deviations of the selected structural units". The examiner respectfully disagrees and

reminds applicants' that the rejection that was given is a 35 U.S.C 103(a) rejection and as such it should be viewed as a whole in conjunction with Birsan et al. which the examiner relies on to teach and cure the deficiencies of Tuma. In this case Birsan at Column 3, lines 22-32 discloses applicants' above limitation.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARSHALL MCLEOD whose telephone number is (571)270-3808. The examiner can normally be reached on Monday - Thursday 6:30 a.m-4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramy M Osman/
Primary Examiner, Art Unit 2457

/Marshall McLeod/
Examiner, Art Unit 2457
4/22/2010